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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,070	10/12/2004	Jean-Marie Dollat	120959	2372

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OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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07/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/507,070	Applicant(s) DOLLAT ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the broad recitation "selected from ...esters", and the claim also recites "namely ...esters" which is the narrower statement of the range/limitation.

Claim 5 contains the broad recitation of "selected from natural clays and silicates" and then the more narrow recitation of "such as vermiculite...silica".

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Claim 8 contains the broad recitation of 235 to 500 micons, and the more narrow recitation "preferably from 160 to 400 microns".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in the use of the Markush grouping on lines 3-6. "The" is not general used in such a grouping. It is not known whether methylthiobutaminde and 4-methylthiobutaminde are part of the grouping. Also on line 1 "the solid form" should be – a solid form - .

Claim 8, line 2 is indefinite in the lack of antecedent basis for "the particles".

Miscellaneous

The phrase in claim 9 "as claimed claim 1" probably should be – as in claim 1 - .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robert et al. (WO 0028835) in view of Binder et al. (6,287,627) and Montsano (British 1,156,010).

Robert et al. disclose a feed supplement in solid form containing an ester of methionine and a carrier which can be soya cake (abstract and page 20, lines 5-30). Isopropyl ester is disclosed as in claim 3 on page 8, lines 25-35) Claims 1 -3, 5, 7 differ from the reference in the use of a porous carrier material. However, soya cake is seen to be porous as vegetable materials have an exchange of gases, i. e. (breathe), which requires pores. Also, Binder et al. disclose that it is known to granulate a Methionine salt solution (abstract and col. 7, lines 20-31). Monsanto disclose that it is known to combine methionine hydroxy analogs with vermiculite, clay, silica, bentonite (claim 5) (page 14, lines 40-45). Also, Bevans et al. disclose the use of MHA on an inorganic silica-based carrier which has been dried (col. 2, lines 42-45). Therefore, it would have been obvious to make a feed supplement in solid form, using the claimed esters of 2-hydroxy-4-(methylthio) butanoic acid (HMBI) as it is known to combine methionine with inert materials.

Claim 4 further requires that the porous carrier has a porosity of 0.4 ml/g. However, it would have been within the skill of the ordinary worker to use a particular degree of porosity, which would have absorbed the claimed material, since the particular porous materials are well known. Therefore, it would have been obvious to use a particular degrees of porosity which would absorb the claimed materials.

Claim 6 further requires sepiolite and claim 7 silica. Silica has been disclosed above. "Up to" reads on zero amounts. Bevens et al. disclose 52% liquid MHA product on silica (col. 2, lines 42-45). Nothing new is seen in the use of a different inorganic carrier absent a showing of unexpected results. Therefore, it would have been obvious to make a product containing a methionine derivative in particular amounts on an inorganic substance.

Claim 8 further requires particular particle sizes. Binder et al. disclose various particle sizes for methionine salts (col. 6, lines 10-15). The composition contains siliceous material (col. 7, lines 25-30). Therefore, it would have been obvious to substitute the methionine material of claim 1 for the methionine salt solution of the reference since they are both liquid forms of methionine and nothing new is seen in spraying one liquid solution as opposed to another on silica type material.

Binder et al. disclose the use of a free flowing animal feed supplement (col. 7, lines 15-21). Claim 9 requires a particular form of methionine. Even though a different form of methionine is used as in claim 9 by the reference, it still is in liquid form, which on the silica makes a solid, and no patentable distinction is seen in the particular liquid composition on the solid material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 7-24-07


HELEN PRATT
PRIMARY EXAMINER